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SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 18 March 1997, at 10 a.m.

Chairman: Mr. SOMOL (Czech Republic)

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The meeting was called to order at 10.25 a.m.

STATEMENT BY MRS. LJERKA MINTAS HODAK, DEPUTY PRIME MINISTER OF CROATIA

1. Mrs. MINTAS HODAK (Croatia) said that the strengthening and development of human rights protection mechanisms were all the more important insofar as respect for human rights was a condition for the maintenance of peace and security in each and every country. That was why Croatia, which was striving to restore peace on its territory, had always been open to all forms of cooperation with the United Nations and various regional organizations. In that respect it wished to express its appreciation to the Special Rapporteur of the Commission on the human rights situation in the former Yugoslavia, Miss Elisabeth Rehn, and to the former United Nations High Commissioner for Human Rights, Mr. José Ayala-Lasso, who had visited Croatia in 1996 on the occasion of the launching of an assistance project in the form of advisory services and technical cooperation in the field of human rights. Croatia also wished to express its gratitude to the expert member of the Working Group on Enforced and Involuntary Disappearances who was responsible for the special process dealing with missing persons, Mr. Manfred Nowak, for the efforts he had made to draw the attention of the international community to Croatia's problems in that field and to investigate the root causes of the disappearances. Croatia supported the activities of the recently established International Commission on Missing Persons in the Former Yugoslavia and thanked all the regional organizations, particularly OSCE and the Council of Europe, for the assistance they had provided in respect of human rights.

2. The Croatian Government stressed the need for the improvement of coordination between the different organizations and bodies dealing with human rights issues, in order to avoid the overlapping of mandates of different bodies, as well as the need to establish more objective criteria for the evaluation of steps taken by countries to improve the human rights situation on their territories. Such criteria should be the acceptance of international standards in the field of human rights, or a country's membership in universal and regional organizations which had specific monitoring mechanisms in the field of human rights; more precise criteria should also be laid down for membership in such organizations on the basis of each country's status in human rights matters. The adoption of such criteria would enable the Commission to avoid double standards; omnibus resolutions which equated the human rights situation in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), as well as the reports drawn up on those countries, would thus become more credible and more reliable.

3. Since achieving independence, the Republic of Croatia had become a party to a vast number of international instruments and had committed itself to applying the principles set out in important documents drawn up under the auspices of such organizations as the United Nations, the Council of Europe and OSCE. In becoming the fortieth member of the Council of Europe, on 6 November 1996, it had also committed itself to becoming a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, and accepting the competence of Strasbourg bodies to examine complaints in respect of individuals and groups. A governmental working group was currently examining the compatibility of Croatian legislation with the Convention. Croatia had also committed itself to

ratifying two recent instruments drawn up under the auspices of the Council of Europe, namely the European Charter for Regional and Minority Languages and the Framework Convention for the Protection of National Minorities. Croatia's accession to all international and regional mechanisms for the protection of human rights would help to guarantee that all persons under its jurisdiction could fully enjoy their fundamental rights.

4. In its letter of intent of 13 January 1997 on the completion of the process of peaceful reintegration of the last occupied part of its territory, Croatia had reaffirmed its commitment to assuring equal rights for all Croatian citizens, regardless of their ethnic origin, and respecting the rights of all minorities in the region. The Croatian Government had also taken steps to ensure the return of refugees of Serbian origin to their places of origin or other places of their choice. However, Croatia would still require any assistance that the international community might offer it with a view to achieving full respect for human rights in the area, including the return of displaced persons and refugees and the normalization of relations between the various ethnic communities or minorities. There were currently 185,000 refugees and 170,000 displaced persons on Croatian territory. After the "Flash" and "Storm" military operations during the course of 1995, which resulted in the liberation of occupied Croatian territory, 61,000 persons had been able to return to their homes. Even so, a great deal remained to be done to rebuild the devastated areas. The Croatian Government had initiated several projects to reconstruct the liberated areas, taking into account their multi-ethnic structure, while projects for ensuring humanitarian aid to the remaining elderly population had been organized with the support of the International Federation of Red Cross and Red Crescent Societies.

5. Croatia, which was convinced that a just peace could be achieved in the region only if those who had committed human rights violations in the past were brought to justice, supported efforts towards the establishment of an international criminal court and was committed to cooperating with the International Criminal Tribunal for the Former Yugoslavia, while hoping that the Court's efforts to bring to justice all the perpetrators of war crimes, particularly those committed on the territory of Croatia, which had been the first victim of aggression and the policy of ethnic cleansing, would be crowned with success. In order to promote the realization of all human rights in its territory, Croatia had set up three new institutions in 1996 - the National Commission for Equality, the Commission on Human Rights Education and the National Committee on the Rights of the Child - whose activities would complement those of the existing Ombudsman and were aimed at strengthening the rights of specific vulnerable groups and addressing certain issues within the human rights field.

6. Now that Croatia could finally hope to see the establishment of lasting peace on its territory, it would be able to work for the realization of its main goals, which were integration in Europe, the establishment of a market economy and the restructuring and development of its social and welfare system. It was also the time for Croatia to work for the building of a democratic society based on the protection of all human rights, democratic values and the rule of law, as well as striving for a happier future for all Croatian citizens.

STATEMENT BY MR. MARC ELOI RAHANDI CHAMBRIER, MINISTER OF JUSTICE IN CHARGE OF HUMAN RIGHTS OF GABON

7. Mr. CHAMBRIER (Gabon) said that since 1990, a number of situations of conflict in the world had hindered the advancement of human rights, notably the crisis in Albania, the still disturbing situation in the Middle East, the refugee problem in Central Africa and the question of Liberia.

8. On the other hand, it seemed that progress was being made towards peaceful settlements in Chad and Angola. In that regard, he underlined the role played by the President of Gabon in the search for lasting peace in Africa. Indeed, Gabon was an ardent defender of human rights and had signed numerous international instruments in that field. The provisions of international conventions were duly taken into account when national instruments were being drawn up.

9. In 1990, Gabon had strengthened its legal machinery for the promotion and protection of human rights and fundamental freedoms by abolishing the single-party system, setting up such institutions as the Constitutional Court and the National Council for Communication and reorganizing the Economic and Social Council, three quarters of whose members were now elected.

10. The review of the Constitution in 1994 had given the Gabonese parliament a second chamber, the Senate, which represented local communities. In the legal sphere three new courts had been established, the Judicial Court, the Administrative Court and the Court of Audit, replacing the former Supreme Court and guaranteeing more efficient justice and greater independence for judges. However, the efforts made by political circles in Gabon to guarantee enjoyment of fundamental freedoms by all citizens continued to be hampered by economic problems stemming in particular from the debt burden and the demands of the structural adjustment programme.

11. Human rights also embraced the right to education, health, work and liberation from distress and poverty, but those aims were hard to meet in third-world countries without a degree of solidarity on the part of the well-off countries, which should not limit themselves to deploring the domestic situation in one country or another, but should also help to improve it.

12. In that regard, Gabon wished to express appreciation to the Commission, the special rapporteurs, the working groups and the NGOs which contributed to its discussions for issuing warnings, year after year, and denouncing violations of human rights wherever they were committed. The work begun a half-century previously should be continued in the spirit of openness, concerted action and dialogue which had marked the Vienna Conference.

13. He paid tribute to the United Nations High Commissioner for Human Rights, Mr. Ayala-Lasso, whose visit to Gabon in July 1996 had been followed by the dispatch of a mission to evaluate requirements in the field of human rights.

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS (agenda item 14) (continued) (E/CN.4/1997/72, E/CN.4/1997/105)

EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO UNITED NATIONS HUMAN RIGHTS INSTRUMENTS (agenda item 15) (continued) (E/CN.4/1997/73, E/CN.4/1997/75, A/51/425, A/51/482)

14. Mr. ALSTON (Chairperson of the Committee on Economic, Social and Cultural Rights) introduced the Committee's report on the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1997/105). He emphasized that the purpose of the draft optional protocol was to allow individuals alleging violations of one of the rights set out in the Covenant to submit petitions to the Committee. That procedure was not an innovation since it already existed under other international instruments, such as the International Covenant on Civil and Political Rights.

15. Describing the broader context in which the draft optional protocol fell, he said it had to be acknowledged that despite the statements made by the United Nations High Commissioner for Human Rights, economic, social and cultural rights still did not occupy their proper place within the framework of United Nations human rights efforts. For example, there was not a single special rapporteur dealing with matters relating to economic, social and cultural rights. Less than 5 per cent of existing projects under the advisory services programme were devoted explicitly to such rights. Four years after the Commission on Human Rights had requested the Secretary-General to invite the international financial institutions to consider the possibility of organizing an expert seminar on the role of the financial institutions in the realization of economic, social and cultural rights, and despite repeated requests by the Committee on Economic, Social and Cultural Rights for the holding of such a seminar, nothing had been done. Similarly, the Commission's 1994 recommendation that the Centre for Human Rights should convene expert seminars had not been followed up. Despite the repeated requests of the Committee, there was not a single specialist within the Centre for Human Rights available to assist it in its task. He could not but welcome the High Commissioner's plan of action to strengthen the application of the Convention on the Rights of the Child, making it possible to provide greater support to the Committee on the Rights of the Child, but the existing imbalance among treaty bodies was thereby further exacerbated. The most important breakthroughs in relation to economic, social and cultural rights in recent years (for example, the United Nations Conference on Human Settlements (Habitat II) and the World Food Summit in 1996, which had recognized, respectively, the right to adequate food and the right to decent housing) had been achieved outside the human rights framework.

16. It was also regrettable that leading non-governmental organizations such as Amnesty International confined themselves to promoting civil and political rights, thereby neglecting half of the rights enumerated in the Universal Declaration of Human Rights.

17. Turning to the draft optional protocol proper, he briefly outlined the background to the issue and reviewed the complaints procedures already in place under other international instruments, highlighting the principal

features of the proposed text. The protocol would be strictly optional and would therefore be applicable only to those States parties which ratified it. The Committee on Economic, Social and Cultural Rights did not recommend the inclusion of an inter-State complaints procedure. In relation to access to the procedure, it had a preference for an individual right to petition. Following the practice in the Human Rights Committee, groups alleging violations should be permitted to submit complaints. The Committee on Economic, Social and Cultural Rights recommended that that right should also be granted to individuals or groups acting on behalf of alleged victims, but not to groups or NGOs which were unable to show such a link.

18. It also recommended that the optional protocol should apply in relation to all of the rights set out in the Covenant, but pointed out that the right to self-determination should be dealt with under that procedure only insofar as economic, social and cultural rights dimensions of that right were involved. On the matter of whether States would have to accept the procedure in relation to all the rights recognized in the Covenant (a comprehensive approach), or only in relation to particular elements of the Covenant (a selective or à la carte approach), a majority on the Committee preferred the comprehensive approach, while a strong minority favoured the adoption of the selective approach. The conditions relating to the receivability of complaints would be similar to those laid down in the Optional Protocol to the International Covenant on Civil and Political Rights. (The Committee acknowledged that permitting reservations to the optional protocol would not be compatible with some of its other recommendations.) Its proposals took account of the concerns expressed by Governments.

19. It seemed that, even if they did not say so openly, many Governments were concerned as to the timeliness of adopting an optional protocol to the International Covenant on Economic, Social and Cultural Rights at a time when the imperatives of the globalization of the economy and financial markets were dominant. In his view, the protection of a set of minimum standards in relation to economic and social rights was not incompatible with those concerns. No one denied that prosperity built on poverty and marginalization was not only amoral but unsustainable. Far from being a drag on economic activity, the protection of economic and social rights promoted stability and created the conditions for the respect of all human rights.

20. Ms. CORTI (Chairperson of the Seventh Meeting of the Persons Chairing the Human Rights Treaty Bodies) introduced the report of the meeting (A/51/482) and outlined the major concerns raised by the chairpersons. First of all, they had expressed a wish that the Economic and Social Council should amend the rules of the Commission on Human Rights so that the treaty bodies would be recognized as having a distinct status that would enable them to participate in all the relevant meetings. They had further requested the General Assembly to indicate in a resolution that the treaty bodies should, as a matter of principle, be permitted to participate in international meetings of interest to them. The recommendation that the view of the treaty bodies should be taken into account when the General Assembly considered proposals for optional protocols to human rights treaties was of great importance. Those matters should not be neglected, since it was vital for the treaty bodies to ensure that they were better heard. There was a gap between the

standards which had been established over the past 50 years and their implementation. The Commission had a duty to study ways and means of enhancing the authority of the treaty bodies.

21. The seventh meeting of the chairpersons of the treaty bodies had reviewed the activities and working methods of each of the six committees. It had noted the steady improvement in the quality of the work and the introduction of innovative methods and procedures, particularly integration. The problems that had been noted stemmed from the insufficient number of ratifications and delays in the presentation of reports by States parties. The preparation of increasingly detailed reports also placed a heavy burden on States parties. The chairpersons recommended once again that those problems should be discussed at regular meetings of States parties, also bearing in mind the independent expert's report on possible long-term approaches to enhance the effective operation of the treaty bodies.

22. The chairpersons recommended that States should spare no effort to publicize the six principal international human rights instruments. They had expressed the wish that at their next meeting UNDP should present a plan of action to promote those instruments and the various reporting procedures through its programmes. On the subject of the plan of action drawn up by the High Commissioner for Human Rights to strengthen the implementation of the Convention on the Rights of the Child, the chairpersons had expressed their fear that it might produce an imbalance between the resources and support available to the Committee on the Rights of the Child and that available to the five other treaty bodies.

23. The chairpersons had also emphasized the need to strengthen cooperation among the treaty bodies and between them and the special rapporteurs appointed by the Commission. Support from the specialized agencies was also extremely valuable. However, the treaty bodies suffered from a lack of specialist staff, particularly in the field of economic, social and cultural rights, and a lack of documentation.

24. Notwithstanding the consensus that had emerged at several United Nations world conferences, recent events throughout the world had shown that the international community was generally powerless to combat hunger, intolerance, religious extremism and violence. Human rights were seriously flouted. There was an urgent need for the United Nations to attach priority to the application of the norms set out in the six main human rights instruments. Looking forward to a new policy for the protection of human rights as a preventive measure, it would be desirable for a resolution of the Commission to request improvement of the status of the treaty bodies.

25. Mr. JEZOVICA (Observer for Slovakia) noted with concern that despite the constant increase in the number of States parties to the international human rights instruments, which constituted the foundation of the system for the protection of human rights established by the United Nations, regrettable divergences in the interpretation of the universal character of human rights persisted. Moreover, the reservations to the international human rights instruments recorded by certain countries, in particular those that were incompatible with the object and purpose of those instruments, constituted an

obstacle to their effective implementation and undermined the commitment of States to full respect and observance of human rights. Consequently, it was important for States to limit the extent of such reservations.

26. It was essential for governments to cooperate with the treaty bodies overseeing the implementation of the instruments in question by the States parties. The reporting obligation of States parties played an important role in that respect. However, the work of the committees should be further streamlined to reduce their workload and eliminate duplication resulting from overlapping provisions in the different treaties. He commended the efforts of the treaty bodies in that direction and encouraged them to exchange more information with one another and with other United Nations organs and bodies, as well as using the existing expertise to allow early detection of large-scale human rights violations and an appropriate response. He expressed the hope that the restructuring of secretariat support services to the treaty bodies and the Commission, the Sub-Commission and their working groups would increase synergy between the different parts of the human rights programme. Lastly, he welcomed the fact that the full-text information retrieval and database system initially developed for the Convention on the Rights of the Child could now be used for other human rights instruments.

27. Mrs. WILKINSON (Amnesty International) said that, as an organization campaigning for the worldwide abolition of the death penalty, Amnesty International strongly supported the idea that States should stop carrying out executions. Executions were incompatible with the international obligation of States to respect two basic human rights: the right to life and the right not to be subjected to cruel, inhuman or degrading punishment. The death penalty was cruel, as cruel as the act for which it was imposed, for human rights applied to everyone in the same way. The death penalty was also irrevocable because it removed the right to redress for wrongful conviction, and it was discriminatory because it was disproportionately inflicted on the most vulnerable members of society.

28. It should be remembered that the Parliamentary Assembly of the Council of Europe had decided that a commitment to stop executions was now a condition for becoming a member of the Council of Europe. Amnesty International had had no reports of executions in any of the 40 member States of the Council of Europe since the beginning of 1997. Some 99 States had now abolished the death penalty in law or practice, the latest being South Africa, as a result of a Constitutional Court ruling of June 1995 which had found the death penalty to be unconstitutional primarily on the grounds that it violated the right not to be subjected to cruel, inhuman or degrading punishment in violation of the country's constitution.

29. It was essential for all States parties to the International Covenant on Civil and Political Rights to sign and ratify at the earliest possible date the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, which provided States wishing to do so with a means of reinforcing their national decisions to abolish the death penalty through accession to a binding international instrument. The time had come for the gallows, the gas chamber, the guillotine, the electric chair and other tools of the executioner to be relegated to museums in the same way as the medieval instruments of torture displayed there. Amnesty International urged the

Commission on Human Rights to take strong action to ensure that no State any longer resorted to the death penalty, a cruel, irrevocable and outmoded form of punishment.

30. Mr. ARTUCIO (International Commission of Jurists) said that the universality, indivisibility and interdependence of human rights could only be translated into reality if all categories of rights were genuinely treated with equal importance. Consequently, he reiterated the Commission's support for efforts to ensure the effective realization of economic, social and cultural rights, and in particular the drafting of an optional protocol under which individuals or groups alleging violations of the rights acknowledged in the International Covenant on Economic, Social and Cultural Rights could submit communications to the Committee on Economic, Social and Cultural Rights. As the Committee had noted in its report (E/CN.4/1997/105), the general principle of such a procedure was in no way new or innovative and would do no more than bring the Covenant into line with the regional instruments (in Africa, Europe and the Americas) providing for similar procedures.

31. He noted with satisfaction that the protocol would be applied to all the rights recognized under the Covenant. He also welcomed the fact that article 7, paragraph 3 of the protocol would enable the Committee, with the agreement of the State party concerned, to visit the territory of that State as part of its process of examining a communication. In that way the Committee would be able to come to a better understanding of the situation in the country, enter into dialogue with the authorities and reach a friendly settlement. ICJ also supported the provisions of article 11, paragraph 2 of the proposal in view of the fact that without adequate financial and human resources for the purpose, the Committee could not achieve its goals.

32. The drafting of the protocol had suffered many setbacks in recent years. Any additional delay in its adoption could not but jeopardize the goal of ensuring that economic, social and cultural rights were treated with the same importance as civil and political rights.

33. Mr. TEITELBAUM (American Association of Jurists) expressed full support for the remarks made by the Chairperson of the Committee on Economic, Social and Cultural Rights concerning the fact that such rights did not enjoy the same attention as other categories of rights. In that regard, the draft optional protocol submitted by the Committee represented a major step forward. The Commission on Human Rights should establish a working group to study it without delay.

34. The American Association of Jurists took a close interest in the work of the Committee, with which it was engaged in a fruitful dialogue, and wished to make a few suggestions designed to improve the proposed text. Firstly, it regretted the fact that, unlike other international instruments such as the International Covenant on Civil and Political Rights, or the Conventions against torture or racial discrimination, there was no provision for a procedure to examine complaints between States. Even if little use was made of such a procedure, it seemed to make no sense in legal terms to exclude

States, which played a vital role in the application of international law. The gap should be remedied by including an article on the subject in the draft.

35. Another questionable point was the fact that, in order to be able to lodge a complaint, individuals had to fall under the jurisdiction of the State in question. The paper containing the draft (E/CN.4/1997/105) put forward no arguments to justify that provision. The text was based entirely on article 1 of the first Optional Protocol to the International Covenant on Civil and Political Rights, but it would have the result in practice of denying some victims the rignt to have recourse to the Committee. The Association considered that, at the very least, the expression "subject to its jurisdiction" should be deleted.

36. He also deplored the fact that any scope for NGOs to act on their own behalf had been ruled out, since the draft reserved that right for direct victims and their representatives. However, various regional instruments including the Inter-American Convention on Human Rights, the African Charter on Human and People's Rights and the 1995 Additional Protocol to the European Social Charter had recognized the right of NGOs to act without causing the disasters forecast in paragraph 22 of the Committee's report. It should be remembered that the victims of violations of economic, social and cultural rights were generally members of the most deprived social classes and had neither the information nor the means needed to appear before international bodies. NGOs could help them to assert their rights, and the Association urged that they should be authorized to present petitions, as already provided for under the regional instruments.

37. In the coming days the Association planned to distribute a document in Spanish and English providing further information on its position on the presented text. Its paper had already received support from several NGOs.

38. Mr. AKBAR (International Educational Development) noted that, although India had ratified the two international human rights Covenants in 1979, it had still not given effect to a number of the provisions listed in them, in particular article 1, common to the two Covenants, which set forth the right of peoples to self-determination. In 1989, when the people of Kashmir had risen in open opposition to Indian occupation, India had responded in the method customary to a foreign occupying Power. The declaration made by India on accession regarding article 1, to the effect that the words "the right of self-determination" in that article applied only to peoples under foreign domination and did not apply to sovereign or independent States or to a section of a people or nation - the essence of national integrity - did not absolve India of its obligations under the article. Furthermore, India had reneged on its obligations under several Security Council resolutions which clearly recognized the right of self-determination of the people of Jammu and Kashmir. The Council had clearly demanded that the will of the people of Jammu and Kashmir should be determined using the democratic method of a free and impartial plebiscite to be conducted under the auspices of the United Nations. However, when the Kashmiris rose to demand their inalienable right of self-determination, the Indian Government, which had first pretended to accept the solution advocated by the Council, had not hesitated to resort to force to crush the freedom movement.

39. The Commission on Human Rights should persuade India to stop deluding itself, withdraw its declaration on article 1 and honour its agreements on Kashmir by allowing the Kashmiris to exercise their right of self-determination and cooperating with the United Nations to hold a plebiscite.

40. Mr. XU Hong (China) said it was undeniable that the practical implementation of the provisions of the international human rights instruments should be promoted mainly through the efforts of the States parties themselves, through the adoption of the administrative and legal measures necessary to give effect to those provisions. However, when considering the reports submitted by States parties, the treaty bodies should take into consideration the economic development levels and historical, social and cultural backgrounds of different countries, in such a way as to perform their task with impartiality and objectivity in a climate of cooperation and mutual respect.

41. A number of technical problems, particularly delays in the submission or consideration of reports, had hampered the effective functioning of the treaty bodies in recent years. The proposals put forward to remedy the situation, for example to avoid duplication, by formulating a code of work for the treaty bodies and allowing States parties to submit a consolidated report on the application of the different conventions to which they were parties, merited careful study.

42. China had always attached great importance to international human rights instruments; it had already acceded to 17 international conventions in that field and had taken an active part in the drafting of new instruments. Domestically, it had made constant efforts for their implementation. In 1996 alone, 14 new laws had been formulated, on such matters as administrative punishment, the legal profession, vocational education, protection of the rights and interests of the elderly, and so on. In addition, major amendments had been made to the Code of Criminal Procedure and the criminal law had been revised on the basis of the three major principles of adjudication according to the law, sentencing corresponding to the crimes committed and the equality of all before the law.

43. China's administrative and judicial organs responsible for law enforcement ensured that no human rights violations occurred. The Chinese Government had also extensively publicized human rights instruments so as to enhance awareness of the matter throughout society.

44. The Chinese Government was making tremendous efforts to comply with the obligations imposed on it by international human rights conventions and submit its reports in good time. The progress made in the implementation of those instruments had been appreciated by the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination. China stood ready to strengthen its cooperation with the United Nations bodies responsible for the protection and promotion of human rights and to continue its efforts to ensure their smooth functioning.

45. Mr. ALESSI (Italy) said that, in the context of the implementation of the International Covenant on Civil and Political Rights and the Second Optional Protocol to it, renewed attention should be drawn to the question of the death penalty, which was of particular concern to Italy.

46. Several States had adopted legislation abolishing capital punishment since 1989, but there were grounds for fearing that growing public concern at the rise in crime in certain countries at the present time, including crime organized on an international scale, might call such achievements into question. In addition, it had to be recognized that a number of countries were not - or not yet - ready to abolish the death penalty, even though it had been clearly shown to have no deterrent effect.

47. Italy planned to submit a draft resolution shortly inviting States that still retained capital punishment to study the possibility of a moratorium which would allow a period of reflection on the humanitarian and social aspects of that irrevocable punishment. At the very least, Italy wished such countries to refrain from blocking the Italian initiative and not to prevent further dialogue. It was not the purpose of the initiative to add new obligations or restrictions to those already laid down in international instruments, and it should be remembered that, as far as the application of the death penalty was concerned, States already had a duty to respect certain rules - humanitarian rules, prohibiting the application of the death penalty to pregnant women, children and the disabled, and legal rules, under which a balance must be drawn between the gravity of the offence and the punishment. Procedural guarantees were also, of course, of special importance.

48. Mr. SIMKHADA (Nepal), speaking on agenda item 14, said that, considering the distance covered over the past 50 years since the proclamation of the Universal Declaration of Human Rights, it had to be recognized that the international machinery to promote and protect human rights, with the Commission as its nucleus, had made considerable progress towards universal support for upholding the ideal proposed in the Declaration. The right to life, set forth in article 3, had been reaffirmed in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Its corollary was abolition of the death penalty, the subject of the Second Optional Protocol to the Covenant. Nepal, which was one of the States which had abolished the death penalty, welcomed the decline in its use elsewhere and supported the initiatives, including the Italian initiative, in favour of dialogue with still hesitant States.

49. Ms. PALALA (Philippines) said that her country, which had ratified or signed 19 human rights instruments, had a special interest in agenda item 15. It strove to discharge its reporting obligation to the relevant treaty-monitoring bodies, and noted with satisfaction the report of the Seventh Meeting of the Persons Chairing the Human Rights Treaty Bodies (A/51/482), with a particular interest in four of the recommendations it contained.

50. Firstly, the report recommended that any new human rights treaties should contain a provision that facilitated procedural amendments without going through the full constitutional ratification process, and that

procedural amendments to such treaties should be packaged in a single document so as to allow States parties to invoke their constitutional amendment procedures only once. That would make it possible for the amendments to come into effect without delay.

51. Secondly, it had been recommended that the view of the treaty body concerned should be taken into account when the General Assembly considered proposals for optional protocols to human rights treaties. It was laudable that the Commission had always encouraged cooperation with such bodies in the work of working groups established to draft protocols.

52. The third recommendation of interest to the Philippines related to the establishment by the Centre for Human Rights of the information systems recommended by the Commission. It was to be hoped that that would soon be accomplished, and that the money needed would soon become available.

53. Lastly, she endorsed the recommendation that the treaty bodies should take a more active role, through initiatives and suggestions, in studies by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, special rapporteurs and other experts appointed by the Commission.

54. At the same time, she felt that the report placed insufficient emphasis on how to increase cooperation with the States parties and on the treaty-monitoring process itself, in other words, streamlining of the reporting process. She saw the reporting obligation of States parties to the various committees not as a confrontation but an opportunity for working together. In that spirit the guidelines for reporting by States parties should be backed up by guidelines for the interpretation of reports under consideration, addressed to the various committees. They would be asked, for example, to take into account the different situations of different countries and to avoid making recommendations on such matters as national budgets that did not fall under their purview.

55. Cooperation would also be promoted through more transparency and consultations between the treaty bodies and States parties for the use of the treaty body database system proposed by the chairpersons, with guarantees for the responsible use of information. The credibility and effectiveness of the treaty bodies lay in cooperation with States parties.

56. Mrs. RIVERO (Uruguay), speaking on agenda item 14, focused on the right to life, and more specifically one of its facets - the abolition of the death penalty. Since the creation of the Republic of Uruguay, its constitution had guaranteed the right to life, the foundation of and condition for all other rights, against infringement either by the Government or by citizens, and the death penalty had been abolished in 1907. Uruguay had acceded to all legal instruments promoting its abolition.

57. It was undoubtedly difficult in the face of certain dreadful crimes to resist the temptation to seek revenge, but death was an irreversible and cruel punishment which was subject to error or could lead to the execution of innocent persons. Furthermore, no deterrent effect had been proven. Uruguay was thus in favour of all initiatives designed to restrict its application as much as possible and ultimately to abolish it. She could not but welcome the

progress made as a result of the implementation of the Covenant on Civil and Political Rights and the optional protocols to it, as well as the growing number of accessions to those instruments.

58. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education), also speaking on behalf of the World University Service, called on the Commission to devote careful attention to the draft optional protocol presented in document E/CN.4/1997/105, since it would remedy the present imbalance between economic, social and cultural rights and civil and political rights, and would favour recognition of the universal, indissociable and interdependent nature of all human rights. The protocol would serve as a necessary means to guarantee the full enjoyment of economic, social and cultural rights; the study of specific cases would enable case law to be established similar to that developed by the Human Rights Committee; and it would give the international community the means to work for effective recognition of such rights, whose content would be better defined and which would at last become enforceable. By adopting the protocol, the international community would drop its attitude of mistrust towards economic, social and cultural rights, and would show that it was firmly resolved to combat injustice and poverty and not to ignore them.

59. With a view to reassuring countries which were hesitant, he pointed out that the protocol would be strictly optional, in other words applicable only to States parties which expressly accepted it; it laid down procedures which would be in keeping with those that already existed under ILO, UNESCO, Economic and Social Council resolution 1503 (XLVIII), the Inter-American Convention on Human Rights and the European Social Charter. Lastly, experience proved that there were no grounds for fearing a flood of complaints.

60. He warned that an "a la carte" approach to the protocol, under which States would select the rights on which they would commit themselves, would run counter to the principle of the equal validity of all rights. The protocol should include the right to self-determination, on the understanding that that right should be dealt with under the protocol procedure only when the economic, social and cultural rights contained in it were in question.

61. In conclusion, adoption of the protocol would be a means of marking with practical actions the fiftieth anniversary of the Universal Declaration of Human Rights.

62. Mr. SCHABAS (Transnational Radical Party), speaking on agenda item 14, observed that 50 States were now bound by international law to abolish the death penalty, and judging by the commitments expressed by States in their reports to the Human Rights Committee or at the time of their admission to the Council of Europe, that figure could be expected to rise in the coming years. The United Nations had contributed immensely to that outcome: one need only mention the Second Optional Protocol, the statutes of the international criminal tribunals for the former Yugoslavia and Rwanda, and the draft statute of the proposed international criminal court. Yet there remained States that had to be persuaded to accede to the Second Optional Protocol, and meanwhile to restrict the number of capital crimes and accept a moratorium on executions. The Hands Off Cain campaign supported such a moratorium because

States would be given breathing-space to evaluate the effects of complete abolition of the death penalty, to see that capital punishment had no greater deterrent effect than imprisonment. That process had been followed in South Africa, which after five years of a legal moratorium had abolished the death penalty. Such a moratorium was also one of the conditions of admission of a State as a member of the Council of Europe. Thanks to that policy, many Eastern European countries had abolished capital punishment. The Russian Federation was also planning to follow that path.

63. Without renouncing the death penalty, some countries had undertaken formal or de facto moratoria. Public opinion was often invoked to justify a reluctance to abolish the death penalty, but that was hard to accept in view of the fact that in present-day society it was unthinkable to make the prohibition of slavery or torture, for example, subject to public opinion or submit an instrument such as the Universal Declaration of Human Rights to an opinion poll.

64. In 1948 René Cassin and Eleanor Roosevelt had refused to agree that the Universal Declaration of Human Rights should acknowledge the death penalty as an exception to the right to life, and their views had prevailed. Since then the right of the individual not to be killed by the State had taken root, and although several decades had been needed before it bore fruit, the moment had now come.

65. Mr. NARANG (Indian Council of Education) paid tribute to the work accomplished by the Committee on Economic, Social and Cultural Rights in preparing the draft optional protocol, but was apprehensive that, like the Optional Protocol to the International Covenant on Civil and Political Rights, it might have little effect, especially in the short term, for the people of the world. Those fears were based, firstly, on the reluctance of the signatory States, as expressed in their reservations, and the absence of resources necessary for the fulfilment of those rights, resources which as matters stood depended on the interest and contribution of the developed countries. The fears also stemmed from the fact that human rights issues had become a weapon in the diplomatic arsenal of the super-Powers.

66. The cold war had resumed, a cold war on human rights waged by the United States, with the European Powers following suit, threatening the political and survival rights of a large section of humanity. The war had undermined the credibility of the very idea of human rights and had encouraged one third-world regime after another to denounce human rights as a concept imposed from abroad - the very regimes that ate out of the hands of IMF and the World Bank and had capitulated before the new GATT conditionalities.

67. Thus the world faced the paradox that at a time when the idea of respect for human rights had emerged in diverse societies, the credibility of the cause had declined because the super-Powers which claimed to espouse it used it as a tool of their commercial interests. By their nature human rights could not be given and hence could not be taken away by any authority, but their use to exert economic and political pressure weakened the cause of human rights in the countries which had recently espoused it and accounted for the reluctance of some developing countries to accede to the optional protocols.

68. It was therefore necessary for the Commission to bring all its influence to bear on countries to provide it with the financial and other resources needed to protect human rights, in treaties and in daily life, and to ensure that it was the entire international community and not one or other Power unilaterally that took steps to ensure that the human rights of the mass of the people were not lost sight of and that the draft protocol prepared by the Committee on Economic, Social and Cultural Rights did not remain a merely theoretical document.

69. Ms. WÖLTE (Women's International League for Peace and Freedom) commended the principle which underlay the draft optional protocol (E/CN.4/1997/105), but deplored the fact that both member States and NGOs not directly affected or representing alleged victims were excluded from submitting petitions. All other international instruments gave States access to their complaints procedures and most regional instruments, as well as ILO and UNESCO, accepted complaints submitted by NGOs. The restrictive nature of the draft protocol meant that victims unable to communicate with international NGOs would be left without recourse.

70. Article 1 of the draft optional protocol also involved a serious limitation as it excluded from the communications procedure victims of violations committed by a foreign State within the territory of another State. The restrictive approach adopted by the Committee, which was tantamount to refusing to allow victims of human rights violations the right to seek redress, was anachronistic in view of the present globalization. It opened the door to many human rights violations of an international character and adversely affected the very principles that the optional protocol sought to reinforce.

71. She asked for her comments to be transmitted to the working group which should immediately be established to continue the consideration of the draft optional protocol.

The meeting rose at 1 p.m.